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EXAMINER

HANSEN, JAMES ORVILLE

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/765,107
Filing Date: January 28, 2004
Appellant(s): CHO, HAN KI

MAILED

DEC 06 2007

GROUP 3600

Mr. Mark R. Kresloff
For Appellant

EXAMINER'S ANSWER

This is in response to the amended appeal brief filed September 14, 2007 appealing from the Final Office action mailed May 24, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments after Final

The appellant's statement of the status of amendments after final rejection contained in the brief is essentially correct. It is noted that a request for reconsideration [October 24, 2006] after the Final office action was entered as to remarks only.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

1,756,984	MASON	5-1930
6,578,902	SILL	6-2003

German Publication DE19838631 A1, Blumenschein, 3-2000.

Certified English translation of German publication DE 19838631.

Appellant's Prior Art Admission [APAA], Figures 1A-1B and supporting material as disclosed on pages 2-3 of the instant application.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1-5, 9, 11 & 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over German publication DE 19838631 [known hereafter as DE'631] in view of Sill [U.S. Patent No. 6,578,902]. DE'631 (figures 1-4c) teaches of a pedestal (fig. 2) used in conjunction with a washing machine (14) [note previously cited U.S. 6,427,966 English equivalent to Blumenschein], the pedestal comprising: a pedestal body (10) supporting a bottom portion of the washing machine; and at least one coupling means (as depicted in figures 4a-4c) provided to both the machine and pedestal body; but DE'631 does not show the coupling means as being provided to lateral sides [interpreted as meaning the vertical or upright sides] of both the machine and the body. Sill (figures 1-5) teaches of a coupling means (fig. 4) utilized to join to

two adjacent members (115, 116) together that are arranged along the same plane.

The coupling means includes a coupling member (123) that could be provided on both lateral sides of the washing machine and the pedestal body [which is located directly beneath the washing machine], and a fastening member (126) that is capable of fastening the coupling member to the side of the washing machine and to the side of the pedestal body, respectively; wherein the fastening member includes, a first fastening member (one 126 – double-sided tape is one option disclosed in the specification) capable of fastening an upper part (viewed as the right side since rotated 90 degrees when attached) of the coupling member to the side of a lower part of the washing machine, and a second fastening member (the other 126 – double sided tape) capable of fastening a lower part (viewed as the left side since rotated 90 degrees when attached) of the coupling member to the side of an upper part of the pedestal body.

Accordingly, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to utilize an additional coupling means, as taught by Sill, for attachment to the lateral sides of DE`631's washing machine and pedestal body since this arrangement would enhance the stability and rigidity of the combined units due to the increased joined surface areas of the coupled units. DE`631 further discloses a receiving part (viewed as the receiving space or volume located within the body – so far as broadly recited) for putting things therein, and wherein the coupling means is designed to adjust a height of the washing machine by means of adjusting members (58). It is understood that the height of the washer in relation to the body would be adjusted prior to incorporating Sill's coupling means.

2. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE`631 and Sill, and further in view of Mason [U.S. Patent No. 1,756,984]. The prior art teaches applicant's inventive claimed structure as disclosed above, but does not show a drawer located within the body. Mason is cited for teaching the use of a drawer (3) coupled with a pedestal body (2) that supports an appliance (1). Accordingly, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the prior art by incorporating a drawer within the pedestal body as taught by Mason because this arrangement would provide DE`631 with a means to readily access items/contents stored within the body of the pedestal since a drawer could be withdrawn from the body and easily inspected, then retracted back into the body after retrieval of the items, while at the same time presenting an aesthetically pleasing pedestal appearance.

3. Claims 1-5, 9 & 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Appellant's Prior Art Admission – figures 1A-1B and correlating information disclosed in the specification [known hereafter as APAA] in view of Sill [U.S. Patent No. 6,578,902]. APAA (figure 1A) teaches of a pedestal (20) used in conjunction with a washing machine (10), the pedestal comprising: a pedestal body (21) supporting a bottom portion of the washing machine; but APAA does not show a coupling means provided to lateral sides [interpreted as meaning the vertical or upright sides] of both the machine and the body. Sill (figures 1-5) teaches of a coupling means (fig. 4) utilized to join to two adjacent members (115, 116) together that are arranged along the same plane. The coupling means includes a coupling member (123) that could be provided on both lateral sides of the washing machine and the pedestal body [which is located directly beneath the washing machine], and a fastening member (126) that is

capable of fastening the coupling member to the side of the washing machine and to the side of the pedestal body, respectively; wherein the fastening member includes, a first fastening member (one 126 – double-sided tape is one option disclosed in the specification) capable of fastening an upper part (viewed as the right side since rotated 90 degrees when attached) of the coupling member to the side of a lower part of the washing machine, and a second fastening member (the other 126 – double sided tape) capable of fastening a lower part (viewed as the left side since rotated 90 degrees when attached) of the coupling member to the side of an upper part of the pedestal body. Accordingly, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate a coupling means, as taught by Sill, for attaching a lateral side of APAA's washing machine to a lateral side of the pedestal body since this arrangement would securely connect the washing machine to the pedestal body thereby enhancing the stability and rigidity of the combined units due to the positive coupling of the units. APAA further discloses a receiving part (22), in the form of a drawer, located within the body for putting things therein.

(10) Response to Argument

After review and consideration of Appellant's arguments, it is apparent that the thrust of Appellants remarks are centered on whether Sill is analogous art and whether the reference is applicable in view of the other evidence references. In response to appellants argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight

reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

It is not required that the prior art disclose or suggest the properties newly-discovered by an applicant in order for there to be a prima facie case of obviousness. See *In re Dillon*, 919 F.2d 688, 16 USPQ2d 1897, 1905 (Fed. Cir. 1990). Moreover, as long as some motivation or suggestion to combine the references is provided by the prior art taken as a whole, the law does not require that the references be combined for the reasons contemplated by the inventor. See *In re Beattie*, 974 F.2d 1309, 24 USPQ2d 1040 (Fed. Cir. 1992); *In re Kronig*, 539 F.2d 1300, 190 USPQ 425 (CCPA 1976) and *In re Wilder*, 429 F.2d 447, 166 USPQ 545 (CCPA 1970).

The above rejections demonstrate a finding that the prior art contained a product {pedestal & washing machine} upon which the claimed invention could be viewed as an "improvement". The above rejections demonstrate a finding that the prior art contained a known technique {Sill discloses on lines 10-11 of col. 1 "invention relates generally to devices and configurations for joining panels"} that was deemed applicable to the product {pedestal & washing machine} for the purpose of securely joining adjacent panel members together. A motivation was set forth that one of ordinary skill in the art would have recognized that applying the known technique would have yielded predictable results and resulted in an improved system.

Where a claimed improvement on a device or apparatus is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement," the claim is

unpatentable under 35 U.S.C. 103(a). Ex Parte Smith, 83 USPQ.2d 1509, 1518-19 (BPAI, 2007) (citing KSR v. Teleflex, 127 S.Ct. 1727, 1740, 82 USPQ2d 1385, 1396 (2007)). Accordingly, Appellant claims a combination that only unites old elements with no change in the respective functions of those old elements, and the combination of those elements yields predictable results; absent evidence that the modifications necessary to effect the combination of elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a). Ex Parte Smith, 83 USPQ.2d at 1518-19 (BPAI, 2007) (citing KSR, 127 S.Ct. at 1740, 82 USPQ2d at 1396. Since Appellant has submitted no persuasive evidence that the combination of the above elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a) because it is no more than the predictable use of prior art elements according to their established functions resulting in the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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